

Include Me In Disability, Rights and the Law in Queensland

by Jennifer Fitzgerald; published
by Queensland Advocacy
Incorporated, 1994; pp.i-v, 1-321.

This book has been several years in the making, and its publication is welcome in the world of disability rights in Queensland. Largely written by Jennifer Fitzgerald, the book's 'Acknowledgments' indicate that a number of people have taken part in the researching and writing. This collaboration has resulted in a valuable reference and resource.

The title indicates what the book is all about. It is intended to be a guide – not too technical but not too general – to those areas of the law that specially impact on people with disabilities. The book has 16 chapters, each dealing with a particular area of the law: such as housing; employment; access to places, services and information; the rights of people in institutions; the ramifications of the *Mental Health Act* (Qld); consumer protection; income support and the criminal law. A useful feature is that each chapter concludes with a 'Contact' section of names, addresses and phone numbers of useful organisations.

A book of this nature will, perhaps inevitably, approach its subject from a particular point of view. The point of view is stated in the 'Introduction':

Inclusive living is the vision behind the words on the pages of this book. Inclusive living is not a new theory, but a natural way to live. It is unnatural to exclude those who differ from the majority . . . Nature itself consists of diversity. [p.4]

The title of the book immediately becomes clear. How this vision is relevant to people with disabilities also becomes clear, when one considers the years of marginalisation, neglect and ignorance that have, until recently, characterised society's and governmental approaches to disability. As the 'Introduction' says, at p.3, the printed words of this book really reflect the untold stories of many people. In many cases these people have been 'hidden behind locked doors and walls in the vain hope that they will be forgotten'.

You should not read this book expecting a dry, academic or legalistic account of the rights and liabilities of people with disability, or of people working in the disability industry. The law and the technical details of rights and liabilities are there, but a second, major theme illuminates and complements what could have been rather boring. This second theme is spelled out starkly in Chapter 2, 'Rights', that knowing about the law also means knowing about the limitations of the law. Laws and the legal system do not always provide adequate solutions to problems. Often, the non-legal issues associated with disability may be more important than the purely technical legal questions. As the author comments at p.10, the hurt feelings, the anger, the humiliation arising from a particular conflict, may be more important to a complainant than the strict legal issues. In other words, it is necessary to know in any situation, the limitations of the law and to realise that sometimes only limited gains will result from a formal resort to the legal system.

The publishers have tried to achieve the right mixture of ideological passion with enough technical legal detail to guide the inquisitive reader, and the book succeeds remarkably well. Although I have been involved in the legal profession for over 20 years, I learnt new things from a number of chapters, such as those on Housing, Institutions and Income Support. Perhaps nowhere is this book's mixture of passion and information more tellingly demonstrated than in the (to me) rather chilling chapter on the Queensland *Mental Health Act*. In simple, spare language, the writer describes the disturbingly

simple processes that can lead to becoming an inmate of Queensland's mental health institutions, as well as the sometimes great difficulties in legally getting out of them. Anyone who is concerned about civil liberty may find this of concern.

The book is very easy to read. The style of writing is direct and simple. Most sentences are reasonably short as are paragraphs – a rare achievement in legal literature. While the book will be useful for lawyers and allied professionals working in the field of disability, this book can be pleasurable and easily read and understood by the average, intelligent lay person. In physical terms as well, the book is easy to come to grips with – being a paperback with generous sized print.

Inevitably, time and new legislation will affect the currency of the book's information. Already amendments to the federal *Industrial Relations Act* have introduced reforms to industrial law that may benefit workers with disability. Future changes in the law will undoubtedly make a second edition of this book a 'must' for anyone working in the disability industry.

For now, this first edition of *Include Me In* is a valuable reference not only for lawyers, but for all those who have anything to do with disability.

CHRISTOPHER GILBERT

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Australian Income Taxation A Concise Casebook

by A. Greenbaum and R. Krever;
Law Book Company, 1994; 412pp;
\$42.00; softcover.

I weighed the 1994 taxation legislation, the version produced by Butterworths in three volumes. It weighs 3.3 kilograms. That is 100 grams more than our son weighed at birth. At the most basic physical level, the legislation is weighty.

When you add the 1.7 kg weight of the prescribed text for Taxation 530 at the Faculty of Law, Monash University (the casebook by Cooper, Krever and Vann), it is easy to understand that taxation students' most common complaint

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is about carrying around their basic materials!

Partly because of its size, the recently published casebook by Abe Greenbaum and Rick Krever, *Australian Income Taxation: A Concise Casebook* is a god-send. It is 412 pages, including the index, and, back to the scales, weighs a mere 500 grams. This might seem flip-pant but, given that this casebook accurately and accessibly distils a large number of taxation cases, it is a major achievement. And, metaphorically, it is far from lightweight.

The work that went into this book is the sort of exercise that the taxation legislation itself desperately needs. Distilling principle clearly, and writing well and concisely take longer than writing in convoluted and imprecise prose. As Thoreau encapsulates:

Not that the story need be long, but it will take a long while to make it short.

The same is true of the tax legislation: it will take a long while to make it short. A full-time tax law improvement project team is headed by Brian Nolan, a former Second Commissioner. It has an unenviable task. The team would do well to use the Greenbaum and Krever book as a model for establishing a clear framework and well articulated structure, attributes which the *Income Tax Assessment Act 1936* (Cth) patently lacks. The tax law improvement task force hopes to apply these attributes in redrafting the ITAA.

Meanwhile, students and practitioners in taxation law must be well organised in order to cope with the sheer volume of materials making up the law of taxation. You can see students wilt when you tell them the ITAA was the first statute to exceed one million words and keeps growing substantially every year. The cases expand that volume of material in seeking the meaning of the statute where disputes arise. That is an additional burden.

The authors of this concise casebook aim to help students reduce that burden by producing a tightly packed, relevant casebook. It has excellent short summaries of the major taxation cases students need to understand.

The structure offers an entirely logical approach to an overview of income taxation. It begins with a comprehensive coverage of income from personal services, property and business.

Part IIIA, the part of the ITAA dealing with capital gains taxation is directly covered under income from property. It is dealt with in a mere seven pages. I

understand the rationale for including extracts from *FCT v Hepples* (1991) 173 CLR 492. In fact, I have already referred my students to the book's excellent summary of a difficult and dense case. However, the rationale for including *Case 26/93* (1993) ATC 320 – an AAT decision dealing with the meaning of sole or principal residence, which is exempted from Part IIIA – is less obvious. While it does assist to understand the AAT's idea of what may constitute a 'sole or principal residence' for the purposes of the section 160ZZQ ITAA exemption, it does not assist to emphasise the overview of Part IIIA which precedes the relevant extract. I think the cases which question the very ambit of the term asset, and which follow on from the changes made to the ITAA as a result of the *Hepples* decision, would have been a better choice. Such cases include *Tuite v Exelby* (1993) ATC 4293 and *Carborundum Realty Pty Ltd v RAIA Archicentre Pty Ltd* (1993) 93 ATC 4418. Extracts from these cases would have emphasised the current debate about whether or not a judgment debt is an asset separate from the property.

Given that the authors have deliberately eschewed considering Part IIIA extensively, I may be carping. However, because the authors ran a line of argument commencing with *Hepples*, I believe that the cases would more clearly explain the legislative amendments designed to cure the 'mischief' caused by *Hepples*.

In chapters 4-7, the book covers deductions, derivation and assignment, tax accounting and trading stock. It then covers taxation of interposed entities and the taxation of company distributions in chapters 8 to 11. It then deals with international aspects of tax, tax administration and, finally, anti-avoidance and anti-evasion. As I stated earlier, the text is well structured and logical.

I found the chapter on international aspects, in particular, to be a highly accessible introduction. The writing assists to de-mystify that area of law. At the heart of considerations of international tax are issues about residence, source of income and the interpretation of treaties. Each area is given adequate treatment. Reference is made to IT 2650 in the context of the Commissioner's view of the domicile test. Here I may be carping again, but there is no reference to Rulings in the index nor in a finding list for rulings and determinations. Nor are they covered in the chapter on tax administration. I believe that they are far

more important than, say, the material on ss.263 and 264.

Taxation teaching must cover the status of both private and public rulings and how, in a number of instances, the Commissioner appears to have gone beyond the case law in publishing a ruling. Even in a work which is an adjunct to the larger works, as with this Greenbaum and Krever book, at the least a reference list of rulings is necessary.

My other disappointment is that there is no conclusion. A conclusion highlighting future issues for tax practitioners and bringing together the lines of argument in each of the chapters would have been illuminating. But, again, that is asking for more where, for students, less is obviously more!

In all, this is a work of substance. It is crisp, to the point and contains a well structured analysis of a weight of case law. For that task the authors should be congratulated. And for their work in making tax law comprehensible.

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ALTERNATIVE LAW JOURNAL

**FEBRUARY 1995
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